

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

ZUPEI GONG,

Plaintiff(s),

SETTLEMENT AGREEMENT

-against-

Docket No. 10-05886 (RJD) (LB)

YI-JIA CHINESE RESTAURANT AND
LIU CHIA-YUN AKA LIU JIA YUN,

Defendant(s).

-----X

WHEREAS this action was commenced by filing of the summons and complaint with the Clerk of the Court on or about December 17, 2010, and the two defendants appeared by same counsel and served an answer to the Complaint; and

WHEREAS the plaintiff and defendants, desire to settle the plaintiff's causes of action against defendants, pursuant to the provisions herein set forth;

STIPULATE AND AGREE AS FOLLOWS:

(1) The above recitals are true and correct and are hereby incorporated into and made part of this Stipulation of Settlement and Order; and

(2) This Court has personal jurisdiction over the defendants and subject matter jurisdiction over all claims asserted in this action as between Plaintiff and the Defendants and over the parties to this Agreement; and

NOW, THEREFORE, it is hereby stipulated and agreed by and between the plaintiff and defendants, and their respective attorneys, that this action is settled as between them.

Defendants Yi-Jia Chinese Restaurant and Liu Chia-Yun a/k/a Liu Jia Yun, and plaintiff Zupei Gong, agree that:

Defendants will, by January 15, 2012, and by each of the fifteenth day of the following 11 months, provide a check to Bernard & Yam, LLP, in the amount of \$1,250.00, payable to "Bernard & Yam, LLP, as attorneys for Zupei Gong" for a total amount paid by December 15, 2012, of \$15,000.00.

In the event all payments are timely made on the checks presented with and as provided in this Stipulation of Settlement and Order, no interest shall be charged to or due from the Defendants on the Settlement Amount and the Defendants shall not have to pay the Default Settlement Amount (as hereinafter provided).

If any of the checks delivered by the Defendants with this Stipulation of Settlement and Order are not paid on presentation to the Defendants' bank or any monthly check payments, costs or interest due pursuant to this Stipulation are not paid on demand, the Defendants shall be in default of this Stipulation of Settlement and Order; provided, the Defendants shall have five (5) days from Plaintiff's written notice to cure any such default; and, if the Defendants fail to cure any such default within such five day grace period, then:

(i) the entire Settlement Amount then remaining unpaid shall become immediately due and payable in full; and,

(ii) interest shall accrue on the unpaid balance of the Settlement Amount the date said payment was due at the annual rate set by the JP Morgan Chase Bank as the "prime" bank lending rate plus five (5%) percent per annum (the "Default Interest Rate") until same is paid in full; and,

(iii) in addition to the payment of the interest provided above, the Defendants shall be liable for all costs incurred by Plaintiff in the collection of the Settlement Amount or of any

portion thereof, or the enforcement or defense of this Stipulation of Settlement and Order and/or in any bankruptcy proceedings brought by and/or against the Defendants, including reasonable attorney and other professional fees and disbursements, and interest shall accrue on the unpaid balance of said costs at the Default Interest Rate from the date said costs are incurred by Plaintiff;

(iv) the prevailing party in any litigation arising from this Stipulation of Settlement can seek its attorneys fees and costs from the other party; and

(v) any payment received by Plaintiff subsequent to said default shall be applied first to reimburse Plaintiff's costs; second, to the payment of any interest due; and, third, to the reduction of the Settlement Amount and/or the Default Settlement Amount as applicable; and, it is further

STIPULATED AND AGREED, all notices provided for in this Stipulation of Settlement and Order shall be given to the parties and their attorneys by regular mail *and* receipted tele-facsimile as follows:

William W. Chuang, Esq.
Jakubowitz & Chuang
Attorney for Defendants
401 Broadway
Suite 408
New York, NY 10013
Tel: 347-542-8529
Fax: 347- 532-1344

Man Yam, Esq.
Bernard & Yam, LLP
Attorney for Plaintiff
401 Broadway
Suite 1708
New York, NY 10013
Tel: 212-219-7783
Fax: 212-219-3604

And, it is further

STIPULATED AND AGREED, that, subject to compliance with the terms of this Stipulation of Settlement and Order by the parties, the parties waive any and all rights to appeal arising out of this litigation and release each other from any and all claims in this action including attorneys fees and costs, except any claims arising out of the Plaintiff's and the Defendants' respective obligations pursuant to this Stipulation of Settlement and Order;

STIPULATED AND AGREED, that upon approval and signature of this Stipulation of Settlement and Order by the Court it shall form a final order and Judgment of the Court enforceable by each party against the other in the event of a default in the terms hereof by the Defendants; and, it is further,

STIPULATED AND AGREED, that this Court shall retain jurisdiction of this action to construe, enforce or implement this Stipulation of Settlement and Order upon the application of any party to this Stipulation of Settlement and Order; and, it is further,

STIPULATED AND AGREED, that any order dismissing, settling or otherwise terminating the civil action out of which this Stipulation of Settlement and Order arises shall incorporate this Order into the terms thereof and shall specifically state and set forth that this Court retains jurisdiction over this Stipulation of Settlement and Order to construe, enforce, or implement this Stipulation of Settlement and Order and the payments and remedies ordered herewith upon the application of any party to this Stipulation of Settlement and Order, and it is further,

STIPULATED AND AGREED, that in the event the Defendants are the subject of voluntary or involuntary filing under the United States Bankruptcy Code:

(a) The Defendants agree their conduct in the non-payment of the overtime and minimum wages to the plaintiff was knowing, willful and malicious as those terms are defined pursuant to 11 U.S.C. §523(a)(6) of the United States Bankruptcy Code and the Defendants' obligations arising out of this Stipulation of Settlement and Order are not dischargeable in bankruptcy pursuant to 11 U.S.C. §523(a)(6) of the United States Bankruptcy Code.

(b) The Defendants will not seek to discharge in bankruptcy their obligations to Plaintiff under this Stipulation of Settlement and Order. Should the Defendants file for bankruptcy prior to fully satisfying, or so as to invalidate or rescind any of, their obligations to Plaintiff under this Settlement Agreement, the Defendants shall promptly reaffirm their obligation to pay any outstanding portion of the Settlement Amount, Default Settlement Amount, or any other obligations due from the Defendants to Plaintiff and continue timely payments and/or performance without default.

(c) The Defendants explicitly agree not to oppose, and moreover shall consent to, any action brought by Plaintiff in bankruptcy against the Defendants to lift any automatic bankruptcy stay as to the Defendants' obligations under this Stipulation so that Plaintiff may pursue any of Plaintiff's remedies with regard to this Stipulation under 11 U.S.C. §362 (or any other applicable section of the United States Bankruptcy Code ("Bankruptcy Code")). The Defendants further waive their right to oppose any application by Plaintiff to lift the automatic stay under 11 U.S.C. §362 (or any other application provision of the Bankruptcy Code) within any of the Defendants' bankruptcy proceedings so long as the Defendants have not satisfied their obligations to pay the Settlement Amount, the Default Settlement Amount and any costs or interest due to Plaintiff.

(d) The Defendants explicitly agrees not to oppose, and moreover shall consent to, any adversary action brought by Plaintiff against any of the Defendants in bankruptcy under 11 U.S.C. §523 (or any other applicable section of the Bankruptcy Code) seeking to declare the Defendants' obligation to pay the Settlement Amount, the Default Settlement Amount, any other costs, interest or fees due under the Stipulation of Settlement and Order, or any settlements and/or judgments based on or arising out of this Stipulation of Settlement and Order which may be agreed to or rendered against anyone or more of the Defendants, non dischargeable. The Defendants further waive their right to oppose any application by Plaintiff within an adversary bankruptcy proceeding to declare any obligations arising under this Stipulation of Settlement and Order non dischargeable under U.S.C. §523 (or any applicable section of the Bankruptcy Code) so long as the Defendants have not satisfied their obligations to Plaintiff hereunder. And, it is further

STIPULATED AND AGREED that Any Notice of Default as may be given by the plaintiff must be sent by mailing it by ordinary mail *and* faxing it to defendants' attorney William W. Chuang, Esq. at Jakubowitz & Chuang, 401 Broadway, Suite 408, New York, NY 10013 (or to such other address as defendants' attorney may hereafter designate in writing) and Tel: 347-542-8529, Fax: 347- 532-1344 (or to such other fax number as defendants' attorney may hereafter designate in writing). The Notice of Default shall be deemed given on the date when sent by fax.

Defendants may pay any of the above amounts earlier than the above deadlines without penalty.

Plaintiff will, by January 31, 2012, file a stipulation of discontinuance with prejudice in the above-captioned action. Plaintiff may restore the case to the Court's calendar if necessary to enforce the terms of this agreement.

This stipulation represents the entire agreement of the plaintiffs and defendants on the matter of settlement between them. There are no representations, understandings or commitments, whether oral or written, outside of this stipulation. And it is further

STIPULATED AND AGREED, that:

(a) Should any clause or provision of this Stipulation of Settlement and Order be construed to be against public policy or determined by a court of competent jurisdiction to be void, invalid or unenforceable such construction and decision shall affect only those paragraphs, clauses or provisions so construed or interpreted, and shall in no event affect the remaining paragraphs, clause or provisions of this Agreement which shall remain in force; and

(b) This Stipulation of Settlement and Order constitutes the entire settlement agreement of the parties. No modifications or waiver of the parties settlement agreement shall be valid unless in writing, signed by the parties. No party shall be bound by any representation, warranty, promise, statement or information unless it is specifically set forth herein; and

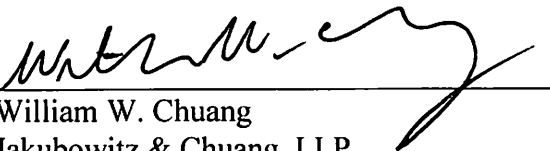
(c) The settlement agreement contained in this Stipulation of Settlement and Order shall bind and inure to the benefit of each party's predecessors and successors in interest, subsidiaries, affiliates, heirs, executors, administrators, successors, assigns and past, present and future agents and may be executed by the parties in counterparts; and, it is further,

STIPULATED AND AGREED, that the Clerk of this Court shall, when requested by any other court in which enforcement of the Stipulation of Settlement and Order is sought,

transmit promptly to the other court a certified copy of this Second Stipulation and Settlement and Order on file in the office of the Clerk.

That the signatures of counsel for the parties on the facsimile copy of the stipulation shall be deemed to be original signatures.

Dated: New York, New York
December 30, 2011



William W. Chuang
Jakubowitz & Chuang, LLP
Attorneys for Defendants
401 Broadway, Suite 408
New York, New York 10013
(347) 542-8529



Man C. Yam
Bernard & Yam, LLP
Attorney for Plaintiff
401 Broadway, Suite 1708
New York, New York 10013
(212) 219-7783

SO ORDERED:

HON. LOIS BLOOM, U.S.M.J.